

An Introduction to Islamic Modes of Financing for Elimination of Interest Based transactions in Banking Sector of Pakistan

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Abstract:

The Economic system of Islam is very balanced one. Islam does not deprive a person to take benefit of all halal (permissible) things, while it has banned all illegal means of earning like deceit, corruption, gambling, etc. Among all evils, interest/usury is the worst form of earning and those who are involved in transactions based on it, they have been threatened with hell. While on the other hand, in most banks and other financial institutions, transactions are carried out on the basis of interest. This is why Muslim scholars worked out alternative modes based on Islamic financing to replace interest-based transactions. In this article six modes of financing i.e. Musharakah, Mudharabah, Murabahah, Ijarah, Salam and Istisnah have been discussed. If these Islamic modes of financing are adopted in banking sector and in other financial institutions ,then it is hoped that in a very short span of time elimination of riba would be possible.

Introduction:

The teachings of Islam are very comprehensive and cover the whole of life. One important aspect of life is the economic one. The approach of Islam towards this aspect is very balanced one. It provides comprehensive guidelines for a sustainable Economic growth. It does not deprive a person to take benefit of all good things that Allah has provided within the given framework. The holy Quran says:

O you who believe ‘forbid not the good things which God has made lawful for you and exceed not the limits. Surely, God loves not those who exceed the limits. And eat of the lawful and good that God has given, and keep your duty to God in whom you believe.’¹

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"Eat and drink of God's Provision and do not wander in the land making mischief."²

"O men! Eat of the things of the earth lawful and pure and do not follow the Satan, without doubt he is your enemy avowed and manifest."³

"O Believers! Take not as forbidden those excellent things which God has sanctioned lawful for you, and do not go beyond limits. God does not love the Transgressors."⁴

However, if Islam allowed a person to take benefit of all *halal* (permissible) things, similarly Islam has strictly banned all illegal means of earning like, deceit, corruption, gambling, usury etc.

Among all these evils usury/interest is the worst from of earning. The Holy Quran Says.:

"Those people who eat usury (interest) shall not rise on the Day of Resurrection but as he raises whose senses are spoiled by the Satan by touching. That is because they said "trafficking is also like usury (interest); whereas God has permitted commerce and has forbidden usury (interest). Then to whom came the admonition from his Lord and he desisted, for him is what is gone before and his affair is committed to God, and whosoever reverts to usury (interest). Such people are the inhabitants of the Hell dwelling there in forever."⁵

"O, believers! Fear God and give up what is outstanding (remaining) of the usury (interest) if you really have faith in His word."⁶

O, believers! Eat not usury (interest) doubled and multiplied and fear God that you may succeed (and prosper).⁷

Maulana Maududi has explained the term *riba* as fallows.

"The Arabic word *riba* literally means "increase in" or "addition to" anything. Technically it was applied to that additional sum which the creditor charged from the debtor at a fixed rate on the principal he lent, that is, interest. At the time of revelation of the Quran, interest was charged in several ways. For instance, a person sold something and fixed a time- limit for the payment of its price, and if the buyer failed to pay it within the fixed period, he was allowed more time but had to pay an additional sum. Also if a person lent a sum of money and asked the debtor to pay it back together with an agreed additional sum of money within a fixed period. And if a rate of interest was fixed for a specific period and if the principal along with the interest was not paid within that period, the rate of interest was enhanced for the extended period, and so on.⁸

On one hand Islam has clearly prohibited usury in all its forms and manifestations while one the other hand the whole edifice of modern banking stands on interest based transactions. This is why some Muslim scholars started thinking upon the issue and after long endeavors and deliberations, they succeeded in presenting a workable frame work for interest free banking. They

carried out their work on the principle that advancing of money is not un-Islamic, subject to the condition if it is invested on profit and loss bases. Islamic commercial law presents alternative modes of financing based on the concept of profit and loss sharing.

The Muslim scholars have also presented other modes of financing where financing on the basis of sharing of profit and loss is not workable due to one reason or another.

In capitalistic economy banks play an important role and they carry out their transactions on the basis of interest, while it is evident from above discussion that Islamic injunctions prohibit interest and usury in all its forms and manifestations.

The possible alternative modes of Islamic financing for elimination of usury are as under:

1: Partnership:

Partnership (*Shirakah*), means Sharing.⁹ while technically speaking it is a relationship between /among persons who have agreed to conduct a business and share the Profit and Loss.¹⁰

Muhammad Taqi Usmani, a renowned scholar has thrown light on the concept of *Musharaka* (Partnership) as under.

“In the context of business and trade it means a joint enterprise in which all the partners share the profit or loss of the joint venture. It is an ideal alternative for the interest based financing with far reaching effects on both production and distribution”.¹¹

Partnership is a valid transaction as the Holy Quran and Sunnah of the Prophet(PBUH) permit it.

The Holy Quran says, ‘And most of the partners do wrong to against the others, save those who believe and do good deeds.¹²

This verse indicates that partnership is a valid transaction if partners remain careful and do not violate its rule to grab the right of others.

It has been related by the authority of Abu Harairah that the Prophet (P.B.U.H) said: “*Almighty Allah says, “I am third party amongst the two unless they don’t embezzle.”*”¹³

Kinds of partnership:

I: Basically there are three kinds of Partnership

1: *Shirakat al Ibahah*

2: *Shirakat Milk*

3: *Shirakat Aqd*

1: *Sharakat Ibahah.*

Shatakat Ibahah is a kind of partnership in which all people have the same rights like the use of roads, mosques etc.¹⁴

2: *Sharakat al milk.* It means a combine ownership of two or more than two persons, in a specified property.¹⁵

In other words it is a contract between two or more people for participation in capital and its profit.¹⁶

Further it has two kinds.

i: *sharakat al milk al ikhtiarī:* *Ikhtiarī* means optional and free will: This kind of partnership comes into existence because both parties opt for it with their free consent.

ii: *sharakat al milk gair ikhtiarī:* there are some kinds of partnerships which come in to existence by themselves without the practical involvement of the parties like the share of a person in inheritance.¹⁷

3: *shirkat aqd:* This partnership is a joint commercial enterprise which comes in to existence by mutual contract of the parties. (*Aqd* means contract)

It has three kinds.

I: *shirkat-al-amwal:* In this kind of partnership all the partners invest capital into a joint commercial endeavor.

II: *shirkat-al-Amal:* In this kind of partnership the partners render some services jointly for customers and distribute the income accordingly.

III: *Shirkat al wujooh:* In this kind the partners purchase a commodity on a delayed price and then sell it at spot. They distribute the earned profit according to the agreement. They have no investment and use their good reputation for the purpose.

(*Shirakat Aqd*) is a contract therefore it has two main essential components.(a) Proposal comes from one side and (b) acceptance from the other. When proposal and acceptance take place, then the partnership would valid. Proposal and acceptance are the two main essential components for any transaction to come into force.¹⁸

It is worthy of mention here that profit or loss should be determined after the transaction is carried out and predetermination of profit for any party will be un-Islamic¹⁹

As for as the ratio of the profit is concerned, in this regard Maliki and Shafi' jurists are of the opinion that each partner must get its profit according to

his investment²⁰ while according to Hanfi and Hanbali schools of thought it may be distributed as they agreed upon²¹.

All the jurists are unanimous on sharing of loss would be according to the ratio of their investment.²²

This principle has been mentioned in the following maxim.

“(In partnership) Profit must be distributed on the basis of the agreement which is made between the parties, while loss (if any) is for all the times subject to the proportion of investment.”²³

As far as the nature of capital to be contributed for partnership is concerned, in this regard there are several opinions, however, according to justice Taqi Usmani, the shared capital in partnership can be contributed in cash as well as in the form of commodities. If it is in the form of commodities, then the market value of them shall determine the share of the partner in the Capital.²⁴

Termination of Partnership:

Partnership can terminate due to three reasons.

- 1: Fulfillment of the purpose of partnership. For example two persons start a joint venture for a specific purpose, like they jointly purchase cloth for trade and for one time only. After sale of the cloth they distribute the profit/loss. In this case partnership comes to its end.
- 2: Islamic Law gives the right of termination of partnership if prior notice is served.²⁵
- 3: If any one of the partners dies or otherwise becomes incompetent, then, the partnership stands terminated.²⁶

2: Mudaribart/Qiradh:

In Islamic jurisprudence *Mudaribart/Qiradh* - is a special kind of partnership where one partner contributes money for investment in a business-, while the other partner takes the responsibility of management and work.

The person who provides money is known as “*rabb-ul-mall*” while who manages and works is known as “*mudarib*”.²⁷

It is obvious from the above definition that there is a difference between *musharakah* and *mudhabarah*, as in the first one both parties provide money for joint venture while in the second one, only one side provides money while work and management comes from the other side.

In partnership loss is shared according to the proportion of their investment while in *mudarabah* the investor suffers the loss and loss of *mudharib* is restricted to his labor which has gone invain.²⁸

The investor can confine *mudharib* to a particular business and he may also permit him to undertake whatever business he wishes. Similarly the investor can make a contract with several persons, in this case the capital shall be used jointly and the earnings shall be distributed amongst them according to the agreement they have. It is worthy of mention here, that *Shariah* has left distribution of the profit to their mutual consent. However, allocation of a lump sum amount of earnings for one partner is prohibited.²⁹⁾

In *mudarabah* transaction the *mudharib* has the following status.

- 1: **Trustee:** *mudharib* is a trustee, so this is his foremost duty, not to show negligence in safeguarding the capital.
- 2: **Agent:** As an agent of the principal, he is bound to carryout business according to the instructions of the principal.
- 3: **Partner:** he is a partner also as he receives profit.
- 4: **Liable:** in case of negligence, deceit, breach of trust, he is liable for damage.
- 5: **Employee:** when the transaction of *mudharibah* becomes null and void due to some legal flaw, then the status of *mudharib* becomes employee and *rabbul mal* become an employer.

In this case he deserves the wages as a normal employee in such like business ³⁰ earns.

As for the issue of the termination of *Mudharabah* is concerned, in this regard the jurists say if prior notice is served then it can be finished.³¹

Islamic jurists also permit that *mudharib* can become a partner also by investing some capital by mutual agreement. In this case the transaction will become a combination of *musharakah* and *mudharabah*.³²

Keeping in view modern banking system, both *musharakah* and *mudharabah* can be used as modes for financing.

Use of *Musharakah* and *Mudhrabah* in Banking Sector:

There are three main primary kinds of accounts on deposit side in banks.

- 1: **Current Account:** The amount deposited in this account may be drawn any time without any prior notice. The depositor is not entitled to profit.

The amount in this account is called deposit (*Amanah*), while in Islamic perspective this does not fulfill the conditions of deposits (*Amanah*). However, in Islamic Banking it will be changed in to loan.

- 2: **Fixed Account:** In this account amount is kept for a specific period and interest is paid for it, which is prohibited in Islam.

3: Saving Account: The amount kept in this account has no time restriction, while account holders are entitled for interest.

To Islamize these accounts the following Islamic modes of financing can be adopted.

1: Working Capital Financing:

It can be used by commercial institutions for purchasing commercial goods or raw material by making a contract of *Musharakah* or *Mudharabah* with a bank or financial institution.

2: Project Financing: If both parties invest then *musharakah* is the ideal transaction. In case, if one party provides money while the other party offers its services as well as money then *mudharabah* and *musharakah* can be opted.

3: Export and Import financing

4: Automobile Financing.

5: House building Financing.³³

Mubarabahah:

The word *murabahah* has been derived from the word *ribh* which means profit.³⁴

In *murabahah* it is the responsibility of a seller to clearly tell his customer the actual cost and the profit.³⁵

There is a difference between *murabahah* and simple sale as in the latter the seller or supplier tells the price and does not mention at what cost he has acquired the commodity while in *murabahah* he tells the purchaser the cost of acquiring and the ratio of the profit.³⁶

In order to make *murabahah* transaction as valid, all rules and regulations pertaining to it must be observed, some of which are as under:

1: The existence of subject : The subject of sale must exist at the time of sale. If a thing does not exist like unborn calf of a cow has been sold, then such like sale is invalid.

2: The seller must be the owner of the subject and it should be in his physical or constructive possession,

3: The subject must be known to the buyer specifically at the time of sale.

4: The sale must be instant and absolute.

5: The subject of sale must be of such kind which has value, therefore anything which has no value according to the practice of traders cannot be sold nor purchased.

6: The sale of *haram*- things like wine, pork is prohibited.

7: It is also necessary to make clear that who will be responsible for the delivery of the sold item.³⁷

8: The purchaser must know the previous price or cost of the commodity

9: The ratio of the profit would be determined by both the parties with the consent of each other.³⁸

The *murabahah* transaction may be carried out at the spot: The buyer deliver the commodity while the purchaser gives the price. While it is also permissible that buyer deliver the commodity on differed payment basis. In *Shariah* this is called *Bai'Mujjal*. Here it is permissible that the price of commodity is payable on a differed basis either in lump sum or in instalments.³⁹

Keeping in view the modern day banking the following procedure may be adopted for *murabahah* as a mode of financing.

The client and financial institution or the bank will sign a contract. This would be a promise from the bank or institution to sell the commodity and the purchaser will promise to buy it on an agreed ratio of profit. It is also permitted for the bank or institution to assign the responsibility of purchasing the product to the client as its agent on its behalf.

When the client purchases the commodity, his role would be as an agent and the possession would be considered of the bank or institution. After this the client will make an offer for the purchasing of the commodity and the bank or institution will accept that offer. In case if the bank or institution purchases the commodity by itself, then there would be no need for the agent.

The commodity would be in the risk of the bank or institution throughout this period; observation of this condition is necessary as this differentiates *murabahah* from the *riba* transaction.

Another essential condition for the validity of the transaction of *murabahah* is; that the commodity should be purchased from a third person and if it is purchased from the client itself then this would be un-Islamic and it would be considered as an interest based transaction.

It is also noteworthy that in case if the buyer does not pay the installment on due date, then the price of the commodity cannot be increased due to his default, however, if the buyer has undertaken in the contract to pay a sum for charitable purposes then he shall be legally responsible to forfeit the amount. The bank or institution would spend this amount only for charitable purposes on behalf of the client.⁴⁰

Ijarah:

Ijarah is an Arabic word which means “to give something on hire”.⁴¹

While technically *Ijarah* is a term used for two different situations.

I: In the first type when the services of a person are hired on wages. It is called Employment.

II: The second type is the use of the usufruits of a property or asset on rental basis.⁴² This is called leasing in the banking sector.

Following are the main components of *Ijarah*.

- 1: **Lesser:** the institution or the person to whom gives something on lease. This is called *Mu'jir*.
- 2: **Lessee:** the person or the institution whom the thing is given on lease this is called *Musta'jir*.
- 3: Subject of lease.
- 4: Rent
- 5: Lease period.⁴³

For a valid lease transaction the following rules and regulations must be observed.

- I: The subject the usufruct of which is transferred must be a valuable thing.
- II: The corpus of the leased property should remaine in the ownership of the lesser.
- III: The lesser will be responsible for the liabilities related to the ownership , while the lessee will be responsible for the liabilities concerned with the use of the property.
- IV: The leased asset will be used only for the purpose for which it has been leased.
- V: The lease period as well as rental must be determined at the time of agreement.
- VI: The period of lease shall start from the date on which the leased property has been handed over to the lessee.⁴⁴

Although *Ijarah* like *murabahah*, is not originally a mode of finance rather it is a simple transfer of usufruct of an asset from one party to another for a specified period and for an agreed consideration. However, if certain rules and regulations are observed, then it may be used as a mode of finance also in the banking sector.

Actually the bank or institution wants satisfaction by the assessment of the business of the client, that whether, he would be a suitable person for making the transaction of lease with him or not⁴⁵. Therefore when the application is given by the client for lease facility the bank or institution usually considers the following before accepting or rejecting the application.

- 1: Sources of income of the client.
- 2: Whether the client would be able to pay the payable amount or not.
- 3: Whether the client has been defaulter in the past or not.

After this assessment when the bank or institution finds the status of the client satisfactory, then his application is accepted, and the limit is determined.

According to the financial status of the client a general agreement is made in this regard. By the virtue of this agreement the client avails the facility. When agreement is made then the bank or institution purchases the leased asset for the client. It is imperative here in this step that all conditions of sale and purchase as prescribed by the *shariah*, shall be observed strictly, otherwise the whole transaction would become null and void.⁴⁶ After this the rent is determined which is the last step.

After maturity of the time of lease the bank or institution has the right to take the leased asset in its possession. However, usually the institution or bank has no interest in the leased subject, therefore the client purchases it or is gifted to him. If it is purchased then it shall require a separate contract.⁴⁷

Salam and Istisna':

According to *Shariah* no one is allowed to sell any commodity which is not in his/her physical or constructive possession but *Salam* and *Istisna'* are excluded from the above- mentioned rule.

Salam is a kind of sale in which a seller gives guarantee for the supply of some particular goods to the buyer at an upcoming date while gets in exchange the price in advance at the spot.⁴⁸

This is a valid transaction as the Prophet(PBUH) has allowed it.

He said

“whoever wishes to enter into a contract of *salam*, he must effect the *salam* according to the specified measure and the specified weight and the specified date of delivery”.⁴⁹

The jurists have laid down the following conditions for the validity of *salam*.

- 1: The buyer must pay the price in full to the seller at the time of affecting the sale.
- 2: Salam will be considered valid only in those commodities the quality and quantity of which can be specified exactly.
- 3: The quality and quantity of the subject must be specified.
- 4: The place and date of delivery also must be specified.

5: Salam is not allowed in those things which have to be delivered at spot. For example, if silver is purchased in exchange of gold or vice versa then in this case it is essential that the delivery of both must be simultaneous⁵⁰.

Salam can be used as a mode of financing in today's world by banks and other financial institutions, especially in agriculture sectors by providing money to farmers for fulfillment of their needs of cultivation and in response the farmers will provide the crop for which they have made the transaction of *salam* with the bank or financial institution.

Like *Salam*, *Istisna'* is also a kind of sale whereby a subject is transacted before it comes in to existence. In this kind of transaction a manufacturer is given order for manufacturing a commodity for the buyer.

It is essential for the legality of *Istisna'* that the rate is fixed with the consent of the parties and the design of the subject is fully known to them.⁵¹

There is a difference between *Istisna'* and *salam*:

- 1: In *istisna'* always a subject is manufactured, while in *salam* transaction it not necessary rather it can be affected on anything whether it needs manufacturing or not.
- 2: It is necessary in *salam* that the price of the subject must be paid in advance and in full while this is not essential in *Istisna'*.
- 3: The agreement of *Istisna'* can be revoked before the manufacturer starts the work while the contact of *salam*, once effected cannot be revoked unilaterally.

Like *salam*, *istisna'* can also be used in the banking sector by providing money to the client who wants to make *istisna'* transaction for financing purposes. He can obtain money from bank either on the basis of *musharakah* or *mudharabah* transaction, then he can make its use in *istisna'* for commercial purposes.

Similarly *istisna'* can be used as a mode of financing in house finance sector. For example if a person wants to build a house on his land, the bank can build it according to the specifications of the client on the basis of *istisna'*. It can also be used for project financing and for building a bridge or a highway.⁵²

Conclusion:

In a nutshell, we may say that the economic system of Islam is very comprehensive and there is no exploitation as everyone is rewarded to the extent of how much they deserve. If Islamic modes of finance are introduced and adopted, the economic condition of the country will improve a lot. However, the task is not so easy, but if coherent efforts are made then this huge task may become possible.

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